## STATE OF VERMONT ENVIRONMENTAL BOARD 10 V.S.A. CHAPTER 151

RE: Juster Associates and Marchese Brothers Enterprises d/b/a Bonanza Restaurant Woodstock Avenue Rutland, Vermont 05701 Application #1R0048-1-EB Motion for Reconsideration Findings of Fact, Conclusions of Law, and Order 10 V.S.A., Chapter 151 (Act 250)

On March 29, 1979 pursuant to Environmental Board Rule 15(E) Marchese Brothers Enterprises, d/b/a Bonanza Restaurant filed a motion for reconsideration of a decision of the Environmental Board issued on March 19, 1979 which denied the permittee's request for an amendment to Land Use Permit #1R0048-EB for construction of a free standing sign at Bonanza Restaurant in the Town of Rutland, Vermont.

After pre-hearing conferences held on May 10, 1979 and October 11, 1979 and various postponements at the request of the applicant, the Environmental Board convened a hearing on January 17, 1980 with hlargaret P. Garland presiding as hearing officer, having been so appointed by the Environmental Board on December 11, 1979 pursuant to Environmental Board Rule 17. The following parties participated in this request for reconsideration:

The applicant, Marchese Brothers Enterprises by Theodore A. Parisi, Jr., Esq.
The Agency of Environmental Conservation by Stephen B. Sease, Esq.

This motion for reconsideration is based upon the contention that the Board's decision to deny the construction of a free standing sign was improper for a number of substantive reasons. On its own motion the Board raised the question whether jurisdiction over this permit should be returned to the District Environmental Commission.

## FINDINGS OF FACT

1. The applicant maintained in this motion that the Board's decision was not based upon the evidence presented by the parties at the hearing, but rather was based only on the independent aesthetic judgment of the Environmental Board. The applicant did not support this contention with any additional evidence. The prior findings of this Board were based upon competent evidence, including Exhibit #14, a set of pictures of the restaurant and the vicinity. We find that this additional sign, when considered in the context of the entire shopping mall and the general location would have an undue adverse effect on the aesthetics of the permitted project and its vicinity.

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- At the hearing, the applicant argued that any adverse aesthetic impact of a new sign adjacent to the restaurant would be minimal when compared to the economic benefit to the applicant from having the sign in place. The only evidence offered in support of this argument was the statement that the restaurant depends on the transient tourist trade for a large percentage of its business. of this statement, information was offered that during the 1979-80 ski season, business was off at the restaurant by approximately 28%. This fact does not support the applicant's assertion. The fact that business declined during the poor ski season of 1979-80 only shows that transients already patronize the restaurant, not that the restaurant needs an additional roadside sign to attract sufficient transient business.
- 3. In response to the question of whether or not jurisdiction should be returned to the District Environmental Commission, the applicant argued that the Environmental Board has no authority to hear amendment requests, and that such requests must be returned to the District Commission for a decision at that level. In Land Use Permit #1R0048, the Environmental Board specifically retained jurisdiction over all signs on this project.

## CONCLUSIONS OF LAW

- 1. The applicant has failed to show in the motion for reconsideration that the Board's previous findings on the amendment request were not supported by the evidence. In addition, the applicant has failed to show that the economic viability of the restaurant is dependent on the construction of an additional free standing sign, even if it could be shown that this issue is a relevant consideration in an Act 250 proceeding.
- 2. The Board on its own motion with notice to parties now returns jurisdiction over this matter to the District Commission. Because the Board specifically retained jurisdiction over the use of signs in this project when we ruled on the permit for the mall, we conclude that it was appropriate for us to rule on the applicant's request for an amendment for the roadside sign. Having heard and decided the amendment request, and being familiar with the underlying circumstances of our decision, it is appropriate for us to hear this motion for reconsideration. At this time we conclude that jurisdiction over the permit should be returned to the District Commission.

3. Based upon the above Findings of Fact, it is the conclusion of the Environmental.Bosrd that no substantive information has been presented to it to warrant a reversal of its earlier decision, and therefore, the Board concludes that the amendment as proposed would be detrimental to the public health, safety and general welfare.

## ORDER

Accordingly, the motion for reconsideration is denied. Jurisdiction over this permit is returned to the District Commission. Upon proper application, the District Commission may consider alternate proposals for **signage** as outlined by the Board in our original decision.

Dated at Montpelier, Vermont, this 9th day of July, 1980.

ENVIRONMENTAL BOARD

By: //argand/

Chairman

Members voting to issue this decision:

Margaret P. Garland Ferdinand Bongartz Dwight E, Burnham, Sr. Melvin H. Carter Michael A. Kimack Roger N. Miller Leonard U. Wilson

Member abstaining:

Daniel C. Lyons